

THE JOINT EXAMINATION BOARD

PAPER T5

BASIC OVERSEAS TRADE MARK LAW AND PROCEDURE

Wednesday, 12 November 2003

3.00pm – 5.00pm

Please read the following instructions carefully. Time allowed – **TWO HOURS**

1. You should attempt 8 questions from Part A and 5 questions from Part B. There are 15 questions altogether, 9 in Part A and 6 in Part B.
2. The marks attributed to the questions are shown – questions in part A carry 5 marks and those in Part B, 12 marks. Questions answered in excess of eight in Part A and five in Part B will not be marked.
3. Where a question permits, reasons should be given for the conclusions reached.
4. Please note the following:
  - Start each question (but not necessarily each part of each question) on a fresh sheet of paper.
  - Enter the Paper Number, the question number and your Examination number in the appropriate boxes at the top of each sheet of paper.
  - Write on one side of the paper only, within the printed margins using a **BLACK** pen
  - **DO NOT** use coloured pens or highlighters within the answers – they will not photocopy.
  - **DO NOT** staple or join pages together in any way.
  - **DO NOT** state your name anywhere in the answers.
5. **Unless specifically requested, answers are NOT required in letter form.**
6. **NO** printed matter or other written materials may be taken into the examination room. **ALL** mobile phones and electronic aids must be switched off and stored away.
7. Answers **MUST** be legible. If the examiners cannot read a candidate's answer no marks will be awarded.
8. **NO WRITING OF ANY KIND WILL BE PERMITTED AFTER THE TIME ALLOTTED TO THIS PAPER HAS EXPIRED. At the end of the examination, assemble your answer sheets in question number order and place in the WHITE envelope provided.**

This paper consists of 3 pages, including this page.

**Part A (Choose 8 questions from 9)**

1. Outline the provisions regarding examination of, and oppositions against, trade mark applications in Brazil. What are the provisions concerning non-use?  
(5 marks)
2. Name the ten countries that will join the EU on 1 May 2004.  
(5 marks)
3. Outline the differences between the Principal Register and the Supplemental Register in the USA.  
(5 marks)
4. Outline the provisions of Article 6<sup>ter</sup> (Prohibitions concerning State Emblems, Official Hallmarks, and Emblems of Intergovernmental Organisations) of the Paris Convention.  
(5 marks)
5. What are the requirements for a valid claim to priority under the Paris Convention, and what are the benefits of such a claim ?  
(5 marks)
6. How, and in what circumstances, would you request a “cooling off period” in connection with a Community Trade Mark application?  
(5 marks)
7. Outline the domicile rules for the choice of jurisdiction for the enforcement of a Community Trade Mark.  
(5 marks)
8. A Community Trade Mark is said to be a ‘unitary right’. What does this mean, and how does this unitary right differ from an International Registration which designates all countries of the EU?  
(5 marks)
9. List the causes of action available to a trade mark proprietor to prevent marketing by a competitor of the same products under similar get-up in Australia and Taiwan.  
(5 marks)

**Part B (Choose 5 questions from 6)**

10. In what circumstances may owners of earlier rights in the new member countries of the European Community, following enlargement, oppose a CTM that already exists at the date of enlargement? Outline the provisions governing the ability of proprietors of earlier rights to prevent the use of extended CTMs in the new member countries.  
(12 marks)
11. Set out the bases for filing a trademark application on the USA Federal Register. Outline forms of protection available for unregistered trade marks in the USA.  
(12 marks)
12. Outline the requirements for maintenance, renewal and restoration of registered trade marks in South Africa and Mexico.  
(12 marks)
13. Your client is a UK based company which owns a trade mark in use and registered in the United Kingdom. It wishes to use this trade mark in Spain, Portugal and Italy. Outline the national registration procedures in Spain, Portugal and Italy. What options for obtaining rights in these countries exist other than filing national applications ?  
(12 marks)
14. Outline the significant differences in procedure and protection under the Madrid Agreement and the Madrid Protocol.  
(12 marks)
15. A Community Trade Mark can be cancelled in two ways: by "revocation" and by a "declaration of invalidity". Explain the circumstances in which each type of action can be invoked.  
(12marks)